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Smoking and Health Litigation

ARGENTINA

Fernandez v. Nobleza-Piccardo S.A.I.C.y F. Discovery hearings were held as scheduled on December 14 and 18. Witnesses for both plaintiff and defendant were called during these hearings. Additional discovery hearings are presently scheduled to be held on February 28 and March 8, 1991.

Lidia Nanci Chauque and Miriam Liliana Alarcon v. Juan Manual Figueroa, Leopoldo Figueroa and Marcela Figueroa de Lee (Chauque, et al., v. Figueroa, et al.). No change.

AUSTRALIA

Australia Federation of Consumer Organizations Inc. (AFCO) v. Tobacco Institute of Australia Ltd. (TIA). TIA has submitted its written reply to AFCO's concluding submissions. The judge is still expected to render his decision in mid-February. The TIA is preparing a public relations response to the decision. Tom Ricke, Senior Vice President Corporate Affairs for Kraft General Foods, who was the architect of the Cipollone public relations plan, is going to Australia to assist Philip Morris and the TIA with the media plan. The decision will be made available, together with the TIA's response, as soon as it is rendered.

Denis Daniel Gallagher v. CSR Ltd. and Midalco Pty. Ltd. v. W.D. & H.O. Wills, Ltd. (BAT affiliate) and Rothmans of Pall Mall Ltd. The tobacco defendants' motion for severance was granted during a hearing on January 18. The tobacco companies were, however, granted leave to participate in the first trial on the issue of statute of limitations. While no claims will be pending against the tobacco defendants in the first trial -- now scheduled to begin on March 21 -- the companies will be allowed to cross-examine any medical expert who testifies on behalf of plaintiff or the asbestos defendants;

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they will also be allowed to call their own expert witnesses on medical issues (Wills can call two experts and Rothmans may call one). The tobacco defendants' experts have not yet been designated. As noted above, the first trial will begin on March 21 and will continue to March 28, when trial will recess until April 17. When trial resumes, it will continue until it is completed. If a verdict is returned against the asbestos defendants, their "contribution action" against the tobacco defendants would then be convened. While it is possible that a second trial could begin as early as May, it is more likely that it will not start until August or September.

CANADA

Imperial Tobacco Ltd. v. Attorney General of Canada and RJR-MacDonald v. Attorney General of Canada. No change. Judge Chabot is expected to render judgment in the near future.

Perron v. RJR-MacDonald, Inc. The statute of limitations trial is to be convened on an as-yet unspecified day during February 1992. Trial on the remainder of plaintiff's claims is tentatively scheduled to be convened during February 1993, although the beginning of the second trial must await the completion of any appeals from the first trial.

Rothmans, Benson & Hedges Inc. v. Attorney General of Canada. No change.

FINLAND

Aho v. Suomen Tupakka (BAT subsidiary) and Oy Rettig Ab (RJR licensee). Another hearing is scheduled for January 31, and defendants are tentatively scheduled to call the following witnesses: Arthur Furst, Sheldon Sommers and Professor Kari Syrjanen.

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NETHERLANDS

Stichting Sigaretten Industry (The Cigarette Industry Foundation) v. Stichting Volksgezondheid en Roken ("StiVoRo") (The Public Health and Smoking Foundation). No change.

NORTHERN IRELAND

Dean v. Gallaher. No change.

Jean Brennan v. Gallaher. No change.

PHILIPPINES

Jardeleza, et al. v. R.J. Reynolds Tobacco Co., Philip Morris Inc., et al. No change.

Zamora v. Fortune Tobacco Corp. No change.

THREATENED LITIGATION

ENGLAND

Booth v. Gallaher. Gallaher has received a demand letter from a former pipe smoker named Booth who claims he has tongue cancer.

No case has been filed.

JAPAN

An anti-smoking group, known as the Lawyer's Organization for Nonsmoker's Rights, has been formed in Japan and announced early in 1990 that a smoking and health product liability case would be filed against JTI. The case apparently will be brought

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on behalf of a smoker who claims to have laryngeal cancer caused by smoking.

No case has yet been filed.

SWITZERLAND

Eberle v. F.J. Burrus. In December 1988, Walter Eberle, who claims he has lung cancer, submitted a formal demand for payment to Swiss cigarette manufacturer F.J. Burrus. Little information on Mr. Eberle is available, although he has alleged he smoked Parisienne brand cigarettes from 1953 to 1987. He had one year from the date he submitted his demand for payment to file his claim.

On December 7, 1989, Mr. Eberle served a second demand for payment, which tolls for another year the statute of limitations on his claim. It is not yet known if Mr. Eberle filed any materials with the court by December 7, 1990.

UNITED STATES LITIGATION

Since the last report, one cigarette smoking and health case has been filed against other industry members. Philip Morris is one of the defendants in a second environmental tobacco smoke case filed by the individual incarcerated in an Arizona federal prison who filed a prior ETS action against Philip Morris and the industry during the fall of 1990. Five cases have been dismissed since the last report, two of which involved Philip Morris. One of these two cases was Tinsley, which was before the California Court of Appeal. (Tinsley was the maritime law case in which the Company was granted summary judgment shortly before trial was to begin in the summer of 1990.) There are now 48 product liability cases pending in the United States. Philip Morris is a defendant in 24 of the cases.

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Two of the three scheduled trial dates were vacated since the last update. The January 7 Cipollone trial date was vacated on December 21; no new date has been set. Judge Sarokin has indicated that he may schedule retrial for March if the United States Supreme Court decides in the immediate future that it will not accept plaintiff's petition for writ of certiorari. Plaintiff filed the certiorari petition on December 28 and asked the Supreme Court to determine whether inadequate warning and intentional misrepresentation claims are preempted by the Federal Cigarette Labeling and Advertising Act. Defendants' brief in opposition to certiorari is now due on March 1, 1991. The March 25 trial date in the LeJeune case has been vacated because American's motion for summary judgment was granted on January 14. It is expected that plaintiff will appeal the ruling. American is the only defendant in LeJeune, which is pending in federal court in Louisiana.

Trial in the third case, Haines, remains scheduled to begin on September 25, 1991, although that trial date is likely to be vacated if the Supreme Court accepts review of Cipollone. Philip Morris is one of the defendants in Haines.

Several developments took place recently before courts of appeal. Brown & Williamson chose not to ask the Supreme Court to review the New Jersey Supreme Court's July 1990 preemption and risk utility ruling in Dewey.

On December 19, the First Circuit Court of appeals affirmed the judgment from Kotler in favor of the Company and Liggett and the separate judgment in favor of American from the 1990 jury verdict in the same case. It is expected that plaintiff will petition the Supreme Court to review the ruling before the March 19 deadline.

On December 27, plaintiffs in Horton appealed the September jury verdict and other rulings.

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On January 8, plaintiffs in Hulin, a case against American from the federal court in Louisiana, appealed an order granting summary judgment in American's favor to the Fifth Circuit Court of Appeals.

Neither plaintiff nor defendants asked the Minnesota Supreme Court to review the Court of Appeals' December 13 ruling in Forster that remanded the case to the trial court for additional discovery on plaintiff's design defect claims.

The Indiana, Louisiana and Pennsylvania Supreme Courts have yet to rule on whether they will accept review of preemption rulings from intermediate state appellate courts in the Yvonne Rogers, Gilboy and Hite cases, respectively. (Additional issues are also before the Gilboy and Rogers courts.)

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